

1. **Introduction**

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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**I.- FACTUAL AND PROCEDURAL BACKGROUND**

On 07-01-2007, the defendant was named in a Bill of Indictment. Bill charged the defendant with:

Consequently, on 10-19-2007, the defendant's Sentencing Hearing was held. After reviewing the defendant's case, and made all the calculations, (Enhancements), (Reduction for acceptance of responsibility) . . . . ect.

The Court ultimately sentenced the defenadant to a term (51), months imprisonment.

**II. ANALYSIS**

*A. The Petition for Reduction under 18 U.S.C. § 3582(c) (2)*

With this Petition for Reduction of Sentence under 18 U.S.C. § 3582(c)(2), the defendant asks the Court to apply Amendment 706 and U.S.S.G. § 1B1.10 of the U.S. Sentencing Guidelines in order to reduce his sentence from 51 months to a term 41 months.

The Defendant respectfully seeks a modification in his term of imprisonment under Title 18 U.S.C. § 3582 (c) (2) and U.S.S.G. § 1B1.10. Section 3582 (c) (2) authorizes the District Court to reduce the sentence imposed on a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the sentencing commission pursuant to Title 28 §994 (o), if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Thereafter, the Sentencing Commission authorized courts, at their discretion, to apply Amendment 706 retroactively. *See* U.S.S.G. § 1B1.10 (a) and (c).

Section 1B1.10 (a) of the United States Sentencing Guidelines states:

“Where a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an Amendment to the Guidelines manual listed in subsection (c) below, a reduction in the defendant’s term of imprisonment is authorized under Title 18 U.S.C. § 3582 (c) (2). If none of the amendments listed in subsection (c) is applicable, a reduction in the defendant’s term of imprisonment under Title 18 U.S.C. § 3582 (c) (2), is not consistent with this policy statement, and thus is not authorized.” The accompanying commentary reiterates that “eligibility for consideration under Title 18 U.S.C. § 3582 (c) (2) is triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range.” U.S.S.G. § 1B1.10, commentary n<sup>1</sup>

Fourth Circuit precedent suggest that nothing more is required in order for

Amendment 706 to be a proper basis for a § 3582 (c) (2) motion. *See United States v.*

*Fletcher*, 74 F.3d49, 56 (4<sup>th</sup> Cir 2004), (Stating that, because the amendment relied on by the movant was listed in § 1B1.10, a sentence reduction is authorized pursuant to Title 18 U.S.C. § 3582 (c) (2). *See also United States v. Goines*, 357 F.3d 469, (4<sup>th</sup> Cir 2004).

In considering a motion for re-sentencing under 3582, the court has discretion to determine whether it will elect to impose the newly-calculated sentence under the amended guidelines or to retain the original sentence. *See United States v. Turner*, 59 F.3d 481, 483-84 (4<sup>th</sup> Cir. 1995) (recognizing that the application of a retroactive amendment is discretionary). This decision should be made in light of the factors listed in 18 U.S.C. 3553(a) . *See United States v. Legree*, 205 F.3d 724, 727 (4<sup>th</sup> Cir. 2000) .

**3553. Imposition of a sentence**

- (a) **Factors to be considered in imposing a sentence.** The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

The nature and circumstances of the offense and the history and characteristics of the defendant;

The need for the sentence imposed--

to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

to afford adequate deterrence to criminal conduct;

to protect the public from further crimes of the defendant;  
and

to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

the kinds of sentences available;

the kinds of sentence and the sentencing range established for--

the applicable category of offense committed by the  
applicable category of defendant as set forth in the  
guidelines--

issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

- (i) that, except as provided in section 3742(g) [18 USCS 3742(g)], are in effect on the date the defendant is sentenced; or

- (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of

title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

- (2) any pertinent policy statement--
  - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
  - (B) that, except as provided in section 3742(g) [18 USCS 3742(g)], is in effect on the date the defendant is sentenced.
- (3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (4) the need to provide restitution to any victims of the offense.

The Defendant respectfully requests that the Court take the following information into account when making its discretionary determination whether to apply United States Sentencing Guidelines Amendment 706 towards his sentence and re-sentence him at the new two-level guideline reduction.

**Defendant Has:**

1. Completed his financial responsibility by paying all fines and assessments.
2. Maintained excellent work reports and assessments throughout his entire incarceration.
3. Good health and is currently (37) years of age.

The purpose of the original sentence has been accomplished.

Defendant has made huge steps toward becoming a law-abiding and productive citizen. During his incarceration he has equipped himself with the tools necessary to succeed in society, re-build his family bond, and make the most out of any opportunities that avail themselves to him once he returns to the outside world. On this basis the Court should exercise it's discretion to apply U.S.S.G. Amendment 706 retroactively to the Defendant's sentence.

**Application of Amendment 706**

Relevant to this case, Amendment 706 reduced the top base offense level for the defendant from level 17--which was used to calculate his sentence--to level 15.

**Offense Level 15** is coupled with **Criminal History Category 6**, the defendant's sentencing exposure would be reduced from 51 to 63 months down to 41 to 51 months imprisonment.



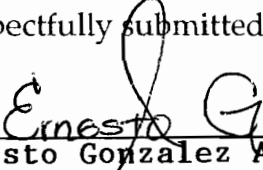
The record of this matter reflects that at the time of Sentencing, The Honorable ILLSTON, in his discretion, determined that a term at the lowest point within the applicable Guidelines range was appropriate.

The Defendant believes that the imposition of a sentence which tends toward the lowest point of the amended range is consistent with all factors which must be considered. As was already noted, the offenses of conviction were not of a violent nature. Last, the undersigned finds that a sentence at or near the lowest point of this range would both reflect the seriousness of the defendant's conduct as well as continue to ensure public safety as it still reflects a substantial sentence for the offense in question. Furthermore, a sentence at the low end of the amended guideline range is in accord with the original sentence imposed by the Court. Therefore, a sentence at the lowest end of the guideline range is consistent with the law and appropriate under the circumstances.

### **CONCLUSION**

Wherefore, the Defendant respectfully requests that this Honorable Court re-sentence this defendant and modify his term of imprisonment pursuant to 18 U.S.C. 3582 (c) (2) through application of Amendment 706 and U.S.S.G. § 1B1.10 to his current term and re-sentence him to the low end of the amended guideline range (41 months).

Respectfully submitted

  
Ernesto Gonzalez Alberto  
Pro-se.

CERTIFICATE OF SERVICE / OR MAILING

CASE NAME: UNITED STATES OF AMERICA vs. ERNESTO GONZALEZ ALBERTO

CASE NUMBER: CR-07-00478-001 SI

I, the undersigned, hereby affirmed that on this 25 day of August  
2008, I deposited in the receptacle for the United States mail  
provided at this Institution for inmates, first class pre-paid  
postage, in a sealed envelope and addressed to:

United States District Court For the Northern District  
San Francisco Division  
235 Pine St. San Francisco, CA. 94104-2701,

a true and correct copy of the attached document(s) identified as  
follows:

(An Original and one Copy of):

MOTION FOR MODIFICATION OF TERM OF  
IMPRISONMENT UNDER TITLE 18 U.S.C. § 3582(c) (2).

In accordance with Houston V. Lack 487 U.S. 266 (1988) these documents  
are deemed filed and served as of this date. Pursuant to 28 U.S.C.  
§1746(2). I further declare under the penalty of perjury that the  
foregoing is correct and true.

DATED: 08-25-2008

  
AFFIANT Ernesto Gonzalez A.

Pro-se.